

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOHN DOE individually, and RICHARD  
ROE on behalf of Minor A, Minor B, and  
Minor C,

Plaintiffs,

v.

BUTTE COUNTY PROBATION  
DEPARTMENT, ROXANNE LARA,  
DAWN HOROWITZ-PERSON,

Defendants.

No. 2:20-cv-02248-TLN-DMC

**ORDER**

This matter is before the Court on Plaintiff John Doe's ("Plaintiff") *ex parte* Motion for Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction ("TRO"). (ECF No. 10.) For the reasons set forth herein, Plaintiff's Motion for TRO is GRANTED in part and DENIED in part.

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**I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff was arrested for possession of child pornography in 2014 and convicted of the offense by jury trial in state court in March 2019. (*See* Ex. 1.)<sup>1</sup> This was a highly-publicized trial, in which Plaintiff proceeded under his real name. (*See* ECF No. 2-1 at 2.) At sentencing, the court ordered Plaintiff to serve five years in state prison under the custody of the California Department of Corrections and Rehabilitation (“CDCR”), to register as a sex offender, and to pay a fine. (ECF No. 10-1 at 7.) Plaintiff asserts there was no order of probation or mandatory supervision, and the sentencing court did not impose any special conditions of supervised release at that time. (*Id.*)

Plaintiff was released from custody on or about October 10, 2020. (ECF No. 10-1 at 7; *see also* Exs. 4–5.) Plaintiff asserts CDCR determined at that time that Plaintiff was not considered a high-risk sex offender and was therefore to be released on “Post-Release Community Supervision” (“PRCS”) instead of parole. (ECF No. 10-1 at 7; *see also* Ex. 4.) Further, CDCR purportedly indicated that Plaintiff would be subject only to the general PRCS conditions mandated by the Postrelease Community Supervision Act of 2011 (Cal. Pen. Code §§ 3450–3465) (“PRCS Act”) and not any special conditions.<sup>2</sup> (*Id.*) However, when Plaintiff reported to Defendant Butte County Probation Department (“BCPD”) for his initial reporting on or around October 12, 2020, he discovered that BCPD had elected to apply several special PRCS conditions to him. (ECF No. 10-1 at 7; *see also* Ex. 5.) Plaintiff claims these additional special conditions were imposed without warning or justification and therefore violate his constitutional rights. (*See generally* ECF No. 10-1.)

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<sup>1</sup> For purposes of this Order, all references made hereinafter to Exhibits 1–5 pertain to the exhibits filed under seal by Plaintiff alongside his Declaration in Support of Motion for TRO (ECF No. 10-2).

<sup>2</sup> This allegation appears to somewhat conflict with certain documents Plaintiff filed under seal, specifically, a PRCS form signed by Plaintiff on August 24, 2020. The PRCS form identifies the general PRCS conditions Plaintiff would be subject to upon release, but also notes special conditions were “TBD” (to be determined), thus indicating that CDCR intended to impose some special conditions on Plaintiff. Included under the special conditions section of the form is a signature box which states, “I acknowledge my special conditions of PRCS,” and which was initialed by Plaintiff. (Ex. 4.)

1 In particular, Defendant Deputy Probation Officer Roxanne Lara (“Lara”) informed  
 2 Plaintiff that application of the “Not Living/Visiting/Being Near Minors” and “No Contact [with]  
 3 Minors” conditions meant that Plaintiff could not live in the same home as his own minor  
 4 children and that this restriction would not be lifted without the approval of Plaintiff’s appointed  
 5 therapist, Defendant Dawn Horowitz-Person (“Horowitz-Person”). (ECF No. 1 at 13–15.) When  
 6 Plaintiff sought permission from Horowitz-Person to lift the restriction, she informed him she  
 7 would not do so until after completing at least six months of therapy with Plaintiff. (*See id.* at  
 8 15–16.)

9 On November 10, 2020, Plaintiff initiated this action on behalf of himself and Minors A,  
 10 B, and C against Defendants BCPD, Lara, and Horowitz-Person (collectively, “Defendants”).  
 11 (ECF No. 1.) The Complaint asserts thirteen causes of action that challenge Plaintiff’s PRCS  
 12 conditions as violative of the Bane Act (Cal. Civ. Code § 52.1), the California Constitution, and  
 13 the U.S. Constitution, and claim Defendants conspired to prevent Plaintiff from residing with his  
 14 minor children in violation of their constitutional rights. (ECF No. 1 at 39–53.) Plaintiff seeks  
 15 damages, attorney’s fees, and costs, as well as injunctive relief that prohibits BCPD from  
 16 enforcing any of the special PRCS restrictions and declares the PRCS conditions void as  
 17 preempted by state law. (*Id.* at 53–54.)

18 Concurrent with the Complaint, Plaintiff also filed a Motion to Proceed Under  
 19 Pseudonyms and to Redact or Seal Identifying Documents (“Pseudonym Motion”). (ECF No. 2.)  
 20 Plaintiff’s Pseudonym Motion is currently set for hearing on January 7, 2021. (ECF No. 7.)

21 On November 18, 2020, Plaintiff filed the instant *Ex Parte* Motion for TRO. (ECF No.  
 22 10.)

## 23 **II. STANDARD OF LAW**

24 A temporary restraining order is an extraordinary remedy. The purpose of a temporary  
 25 restraining order is to preserve the status quo pending a fuller hearing. *See* Fed. R. Civ. P. 65; *see*  
 26 *also Costa Mesa City Emp.’s Ass’n. v. City of Costa Mesa*, 209 Cal. App. 4th 298, 305 (2012) (on  
 27 preliminary injunction, “[t]he purpose of such an order is to preserve the status quo until a final  
 28 determination following a trial.”); *GoTo.com, Inc. v. Walt Disney, Co.*, 202 F.3d 1199, 1210 (9th

1 Cir. 2000) (“The status quo ante litem refers not simply to any situation before the filing of a  
2 lawsuit, but instead to the last uncontested status which preceded the pending controversy.”). In  
3 general, “[t]emporary restraining orders are governed by the same standard applicable to  
4 preliminary injunctions.” *Aiello v. One West Bank*, No. 2:10-cv-0227-GEB-EFB, 2010 WL  
5 406092 at \*1 (E.D. Cal. Jan. 29, 2010); *see also* L.R. 231(a).

6 “A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed  
7 on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief,  
8 [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.”  
9 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A plaintiff must “make a  
10 showing on all four prongs” of the *Winter* test to obtain injunctive relief. *All. for the Wild*  
11 *Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). In evaluating a plaintiff’s motion, the  
12 district court may weigh the plaintiff’s showings on the *Winter* elements using a sliding-scale  
13 approach. *Id.* Under the sliding scale approach, “the elements of the preliminary injunction test  
14 are balanced, so that a stronger showing of one element may offset a weaker showing of another.”  
15 *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012) (quoting *All. for the Wild Rockies*, 632  
16 F.3d at 1131). Simply put, a stronger showing on the balance of the hardships may support  
17 issuing injunctive relief even where the plaintiff shows that there are “serious questions on the  
18 merits . . . so long as the plaintiff also shows that there is a likelihood of irreparable injury and  
19 that the injunction is in the public interest.” *All. for the Wild Rockies*, 632 F.3d at 1135.

20 A TRO — unlike a preliminary injunction — may issue even where the adverse party has  
21 not received notice of the motion. However, such an order may issue only if: “(A) specific facts  
22 in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or  
23 damage will result to the movant before the adverse party can be heard in opposition; and (B) the  
24 movant’s attorney certifies in writing any efforts made to give notice and the reasons why it  
25 should not be required.” Fed. R. Civ. P. 65(b)(1).

26 The Eastern District of California Local Rules also impose additional requirements for a  
27 motion for a TRO. First, the Court will consider whether the moving party has unnecessarily  
28 delayed in seeking injunctive relief. *See* E.D. Cal. L.R. 231(b). Second, the moving party must

1 provide specific documents to the court in support of the requested TRO. *See* E.D. Cal. L.R.  
2 231(c).

### 3 **III. ANALYSIS**

4 Plaintiff seeks to enjoin BCPD and Lara from enforcing the special PRCS conditions that  
5 were applied when Plaintiff was released from custody. (ECF No. 10 at 1–2.) Plaintiff claims the  
6 special conditions were imposed “internally without court order” and without due process, in  
7 violation of the California Constitution and the First and Fourteenth Amendments of the U.S.  
8 Constitution. (*Id.* at 2.) Plaintiff further claims these conditions exceed the authority granted  
9 under the PRCS Act and are preempted by state law. (*Id.*)

10 Additionally, Plaintiff seeks an order that enjoins all Defendants and their counsel from  
11 identifying, through unredacted or unsealed public court filings or by any other means, the true  
12 identity of Plaintiff, or any characteristics that would reveal his identity, until the Court rules on  
13 Plaintiff’s pending Motion to Proceed Under Pseudonyms and to Redact or Seal Identifying  
14 Documents (ECF No. 2). (*Id.*)

15 The Court notes these requests, though framed in a single Motion for TRO, present two  
16 discrete issues requiring separate analyses. Accordingly, the Court will address each of Plaintiff’s  
17 requests in turn.

#### 18 **A. TRO to Enjoin Enforcement of Special PRCS Conditions**

19 With respect to Plaintiff’s request seeking to enjoin BCPD and Lara’s enforcement of  
20 each of the identified special PRCS conditions, the Court finds denial of Plaintiff’s motion is  
21 warranted on procedural grounds alone.

##### 22 *i. Undue Delay*

23 Local Rule 231(b), which governs the timing of motions for TRO, provides that “the  
24 Court will consider whether the applicant could have sought relief by motion for preliminary  
25 injunction at an earlier date without the necessity for seeking last-minute relief by motion for  
26 temporary restraining order.” E.D. Cal. L.R. 231(b); *see also Brian Lichtenberg, LLC v. Alex &*  
27 *Chloe, Inc.*, No. CV 13–06837, 2013 WL 5775134, at \*4 (C.D. Cal. Oct. 25, 2013) (“In analyzing

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1 irreparable harm, courts should take into account whether a movant ‘proceeded as quickly as it  
2 could have’ in seeking a TRO.”).

3 At the TRO stage, courts consider whether the movant would have been able to file a  
4 noticed preliminary injunction motion had it acted diligently. *See, e.g., Occupy Sacramento v.*  
5 *City of Sacramento*, 2:11–CV–02873, 2011 WL 5374748, at \*4 (E.D. Cal. Nov. 4, 2011)  
6 (denying application for TRO for 25-day delay from initial threat of harm). Should the Court find  
7 such a delay, the Court may deny the requested TRO on those grounds alone. E.D. Cal. L.R.  
8 231(b); *see also Occupy Sacramento*, 2011 WL 5374748, at \*4 (denying TRO application solely  
9 based on Local Rule 231(b)); *Mammoth Specialty Lodging, LLC v. We-Ka-Jassa Inv. Fund, LLC*  
10 (*Mammoth*), No. CIV-S10-0864-LKK-JFM, 2010 WL 1539811, at \*2 (E.D. Cal. Apr. 16, 2010)  
11 (same); *Murphy v. United States Forest Serv.*, No. 2:13-CV-02315-GEB-AC, 2013 WL  
12 12174044, at \*1 (E.D. Cal. Nov. 15, 2013) (declining to address substantive issues where plaintiff  
13 provided no explanation as to why he waited more than a month to file a motion for a TRO).

14 Here, Plaintiff’s initial “Notice and Conditions of Postrelease Community Supervision”  
15 form indicates Plaintiff’s special conditions of PRCS were “TBD” (to be determined). (Ex. 4.)  
16 Plaintiff signed and initialed this form on August 24, 2020, indicating his acknowledgment of  
17 pending special conditions. (*Id.*) Additional documentation filed by Plaintiff under seal indicates  
18 he was released from prison on or around October 10, 2020. (*Id.*) On October 12, 2020, Plaintiff  
19 signed release documents which identify each of the special conditions at issue in the instant  
20 Motion for TRO. (Ex. 5.) Notably, Plaintiff’s initials appear next to each discrete paragraph  
21 setting forth each of the special conditions identified on the aforementioned form. (*Id.*)  
22 Therefore, it appears from the face of the documentation submitted by Plaintiff that he received  
23 notice he would be required to consent to the imposition of special conditions in order to be  
24 granted a release from prison on probation at least as early as August 24, 2020, and he was aware  
25 of the specific special conditions that applied to his release on or around October 12, 2020. Yet  
26 Plaintiff did not seek a TRO until November 18, 2020, over a month after purportedly receiving  
27 specific notice of the special conditions to be applied to the terms of his release. Indeed, it is  
28 unclear why Plaintiff did not file a lawsuit challenging the validity of the special PRCS conditions

1 of his release sooner. Plaintiff's efforts after initiating this lawsuit to convince Defendants via  
 2 meet and confer to stipulate to the terms of his proposed TRO (*see* ECF No. 10 at 3; ECF No. 11  
 3 at 1–3) does not excuse his failure to seek a TRO sooner. As such, Plaintiff fails to establish he  
 4 was somehow prevented from timely seeking a “preliminary injunction at an earlier date without  
 5 the necessity for seeking last-minute relief by motion for temporary restraining order.” E.D. Cal.  
 6 L.R. 231(b); *see also Occupy Sacramento*, 2011 WL 5374748, at \*4; *Mammoth*, 2010 WL  
 7 1539811, at \*2; *Murphy*, 2013 WL 12174044, at \*1. On this basis alone, the Court finds denial  
 8 of Plaintiff's Motion is warranted.

9 *ii. Status Quo*

10 The second concern for the Court relates to the purpose of a TRO. The purpose of a TRO  
 11 is to preserve the status quo “just so long as is necessary to hold a hearing, and no longer.”  
 12 *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda*  
 13 *Cty.*, 415 U.S. 423, 439 (1974); *see also* Fed. R. Civ. P. 65. Here, the status quo is that Plaintiff  
 14 agreed to submit to certain special PRCS conditions in order to be released on PRCS. At the  
 15 latest, Plaintiff acknowledged and agreed to those terms on October 12, 2020. Thus, Plaintiff's  
 16 Motion for TRO does not seek to maintain the status quo, rather it seeks to alter the status quo: if  
 17 granted, Defendants would be precluded from enforcing the specific requirements that were duly  
 18 presented as a pre-condition to Plaintiff's release, while Plaintiff retained the benefits of his  
 19 agreement to be subjected to said special conditions. This would be a material change of position  
 20 from the status quo.

21 Plaintiff further contends an expedited hearing is required because his constitutional rights  
 22 are being violated every day the PRCS conditions remain in effect, and “each day spent apart  
 23 [from his three minor children] is precious family time lost that can never be brought back with  
 24 legal remedies.” (ECF No. 10 at 4.) While the Court is mindful of this hardship, it remains  
 25 unpersuaded that the harm Plaintiff identifies constitutes a new and imminent harm that will  
 26 occur absent emergency injunctive relief. In sum, the Court is not persuaded that the purpose of  
 27 Plaintiff's Motion is to maintain the status quo, which is the underlying purpose of a TRO. *See*  
 28 *Granny Goose Foods*, 415 U.S. at 439.



1 For the foregoing reasons, the Court exercises its discretion under Local Rule 231(b) to  
2 DENY Plaintiff's TRO for last-minute relief with respect to his request to enjoin enforcement of  
3 his special PRCS conditions (ECF No. 10 at 8–21, 22–24).

4 B. Request to Proceed Under Pseudonym

5 The Court next considers Plaintiff's request to enjoin Defendants from filing documents  
6 that reveal Plaintiff's identity and permit Plaintiff to proceed under a pseudonym until the Court's  
7 ruling on Plaintiff's pending Pseudonym Motion (ECF No. 2).

8 With respect to this request, the Court finds Plaintiff has met the procedural requirements  
9 outlined by Local Rule 231(c) and has not unnecessarily delayed in seeking injunctive relief. *See*  
10 L.R. 231(b), (c). Specifically, unlike Plaintiff's prior request, the earliest date Plaintiff could seek  
11 to proceed under a pseudonym was the date that he initiated this action. Here, Plaintiff filed his  
12 Pseudonym Motion on the same day that he initiated this action. (*See* ECF Nos. 1–2.) Plaintiff  
13 additionally included a separate correspondence to each Defendant with the Complaint in which  
14 he sought to meet and confer with Defendants as to the pseudonym issue. (ECF No. 10 at 3; ECF  
15 No. 11 at 1–3.) Further, the Court finds that filing the Motion *ex parte* was justified where  
16 counsel for Plaintiff, Ms. Lund, avers that she encountered difficulty in her attempts to meet and  
17 confer with Defendants prior to filing the Motion for TRO due to multiple unsuccessful service  
18 attempts with respect to Horowitz-Person and Lara. (*See* ECF No. 6; ECF No. 10 at 3; ECF No.  
19 11 at 2–3.)

20 Thus, the Court finds Plaintiff has sufficiently established he has not unnecessarily  
21 delayed and that filing the Motion *ex parte* was justified with respect to the pseudonym issue.  
22 Accordingly, the Court addresses Plaintiff's Motion for TRO as to the pseudonym issue on the  
23 merits with respect to each prong of the injunctive relief analysis.

24 i. *Likelihood of Success on the Merits*

25 Plaintiff's instant request seeks to prevent Defendants from filing identifying information  
26 about him and permit Plaintiff to proceed by pseudonym until the Court has ruled on his pending  
27 Pseudonym Motion, which is currently set for hearing on January 7, 2021.

28 As a general rule, "the identity of the parties in any action, civil or criminal, should not be



concealed except in an unusual case, where there is a need for the cloak of anonymity.” *United States v. Doe (Doe I)*, 488 F.3d 1154, 1156 n.1 (9th Cir. 2007); *see also United States v. Doe (Doe II)*, 655 F.2d 920, 922 n.1 (9th Cir. 1981) (granting a request for use of a pseudonym in an “unusual case” where criminal defendant was a government informant who, the parties agreed, would have “faced a risk of serious bodily harm if his role on behalf of the government were disclosed to other inmates”). In the unusual case, a court must consider whether anonymity is “necessary to protect a person from injury or harassment.” *Doe I*, 488 F.3d at 1156 n.1. The court must then “balance the need for anonymity against the general presumption that parties’ identities are public information.” *Doe I thru XXIII v. Advanced Textile Corp. (Advanced Textile)*, 214 F.3d 1058, 1068 (9th Cir. 2000) (applying this balancing test to the specific context of a civil employment retaliation claim). To determine whether to allow a party to proceed anonymously when the opposing party has objected, a district court must balance five factors: “(1) the severity of the threatened harm, (2) the reasonableness of the anonymous party’s fears, ... (3) the anonymous party’s vulnerability to such retaliation,” (4) the prejudice to the opposing party, and (5) the public interest. *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Estate (Kamehameha)*, 596 F.3d 1036, 1042 (9th Cir. 2010).

In his Pseudonym Motion, Plaintiff argues he presents an unusual case in which the need for anonymity arises not from the elevated risk of violence to *Plaintiff* that may result due to his status as a sex offender, but from the elevated risk of violence to Plaintiff’s three minor children, who also bring this action. (*See generally* ECF No. 2.) While it is well established that minors may proceed in a suit anonymously, *see* Fed. R. Civ. P. 5.2(a), Plaintiff argues he too must proceed under pseudonym in order to prevent the public revealing of his minor children’s identities that would inevitably occur if Plaintiff were required to proceed under his real name. (ECF No. 2 at 6.)

As an initial matter, the Court notes this connection appears tenuous. Indeed, the Court questions the value that proceeding under a pseudonym would have for Plaintiff at this point, as Plaintiff has admittedly already proceeded in his criminal trial and subsequent appeal under his real name, and his children’s identities were already exposed to the public through the media

1 during Plaintiff's highly-publicized criminal trial. (*See id.* at 4.) Moreover, the Court is  
2 cognizant of the fact that the Ninth Circuit has rejected the argument that "mere membership in a  
3 class of offenders that may be targeted" constitutes a sufficiently "unusual case" for pseudonym  
4 purposes where the offender was the sole plaintiff. *U.S. v. Stoterau*, 524 F.3d 988, 1002, 1013–  
5 14 (9th Cir. 2008) (denying motion to proceed under pseudonym filed by convicted sex offender  
6 appealing several aspects of his sentence, including special conditions of his supervised release).  
7 Thus, the Court must express some skepticism as to whether Plaintiff's evidentiary support will  
8 be sufficient to prevail on the pending Pseudonym Motion after it is fully briefed by all the  
9 parties. Nevertheless, on the instant record and at this stage of the proceedings, the Court finds  
10 Plaintiff has sufficiently established his circumstances are "unusual" for purposes of the  
11 pseudonym analysis. *See generally Kamehameha*, 596 F.3d at 1042–46 (evaluating Doe  
12 children's pseudonym motion on the merits). Similarly, while mindful of the fact that Defendants  
13 have not had the opportunity to submit argument in opposition to Plaintiff's Motion for TRO, the  
14 Court nevertheless finds that Plaintiff has sufficiently established serious questions on the merits  
15 of his Pseudonym Motion at this time. *All. for the Wild Rockies*, 632 F.3d at 1135.

16 As to the first factor, severity of the threatened harm, Plaintiff presents a number of  
17 examples of potential threats to his children based on their association with Plaintiff. During  
18 Plaintiff's criminal trial, in which he did not proceed anonymously, Plaintiff's children were  
19 harassed and threatened merely due to their association with Plaintiff. For example, out of  
20 hundreds of online hate comments and death threats directed at Plaintiff, some commentators also  
21 questioned what Plaintiff would think if a similar crime were to happen to Plaintiff's own  
22 children. (ECF No. 2-1 at 2.) The Court finds these threats of harm are sufficiently severe to tip  
23 the first factor in Plaintiff's favor. *See Kamehameha*, 596 F.3d at 1043–44 (citing *Advanced*  
24 *Textile*, 214 F.3d at 1071) (recognizing that threats of physical harm present the "paradigmatic  
25 case for allowing anonymity").

26 In determining the second factor, the reasonableness of Plaintiffs' fears, the Court must  
27 consider the purported threats within the context of the circumstances. *Kamehameha*, 596 F.3d at  
28 1044 (citing *Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*,

1 290 F.3d 1058, 1079–80 (9th Cir. 2002) (en banc) (taking into account the context of the “random  
2 acts of violence” of others); *Doe v. Stegall (Stegall)*, 653 F.2d 180, 183 n.6 (5th Cir. 1981)  
3 (holding plaintiffs of a lawsuit about school prayer reasonably feared harm from veiled threats of  
4 violence made at community meetings such as, “God is fixing to come back. He’ll show them,”  
5 “Christians must beat the evil out of these people,” and “We have got to band together and whop  
6 this evil thing.”)). Here, Plaintiff has submitted evidence that individuals already directed  
7 harassment and threats towards his wife and minor children merely due to their association with  
8 Plaintiff during his criminal trial. (*See* ECF No. 2-1 at 2.) In addition to threats by phone, mail,  
9 and online, dozens of people stopped by the family home, banging on the door, looking through  
10 the windows, hanging out on the front yard, and terrifying the children. (ECF No. 2-2 at 2.)  
11 Plaintiff additionally argues that the current political climate is such that “[d]isagreements  
12 specifically about the direction the criminal justice system should move have resulted in mass  
13 protests, violence, and property destruction nationwide.” (ECF No. 2 at 5.) He points to  
14 examples of individuals who have supported legislation that “even tangentially concerns sex  
15 offender laws” who have been directly targeted and significantly harassed with death threats and  
16 also discusses the role of large groups on social media like QAnon, whose followers’ sole agenda  
17 is to attack those they suspect to be involved with child trafficking. (*Id.* at 5–6; ECF No. 2-2 at  
18 3.) Based on these identified threats, Plaintiff argues his fear that some individuals will attempt  
19 to levy a bit of “street justice” to help Plaintiff “understand how parents of child-victims feel  
20 when their own children are injured by an assault” are legitimate and reasonable. (*See id.*)

21 Again, the Court is mindful of the fact that Defendants have not had the opportunity to  
22 submit argument in opposition to Plaintiff’s Motion for TRO. Nevertheless, based on the current  
23 record and considering the context of the circumstances of this case, the Court finds Plaintiff has  
24 adequately established at this time that his fears of harm are reasonable. *See Kamehameha*, 596  
25 F.3d at 1043 (finding threats of physical harm sufficiently severe where plaintiffs’ attorney  
26 received phone calls that “both you and your haole clients can get the lickins’ you deserve,” and  
27 plaintiffs received threats such as “kill haole day everyday” and were warned they would need  
28 bodyguards). Accordingly, the second factor also weighs in favor of anonymity.

1 As to the third factor, the Court finds Plaintiff's minor children, as co-Plaintiffs, are  
2 sufficiently vulnerable to the threatened harm. *See Stegall*, 653 F.2d at 186 (finding the fact that  
3 the plaintiffs were children was "a significant factor in the matrix of considerations arguing for  
4 anonymity"); *see also* Fed. R. Civ. P. 5.2(a) (permitting redactions to ensure anonymity of  
5 minors); *Kamehameha*, 596 F.3d at 1045 (finding third factor weighed in favor of anonymity for  
6 Doe children). Because it appears at this time that the continued anonymity of Minors A, B, and  
7 C is contingent on Plaintiff proceeding under a pseudonym, the Court finds this third factor also  
8 favors Plaintiff.

9 With respect to potential prejudice to Defendants, the Court finds this fourth factor also  
10 weighs in Plaintiff's favor. Plaintiff and the Doe children's identities are known to Defendants  
11 from the documents filed under seal and Plaintiff's personal communications with respect to  
12 filing the instant action under pseudonym. (*See* ECF No. 2 at 6–7; ECF No. 2-1 at 3.) Therefore,  
13 the Court cannot at this time identify any prejudice that would result against Defendants.<sup>3</sup>  
14 Moreover, to the extent Defendants would be required to redact certain documents or file them  
15 under seal, the Court finds such administrative burdens, at most, only minimally prejudice  
16 Defendants. *See Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017).

17 Finally, with respect to the fifth factor, the Court acknowledges the public generally has a  
18 "common law right of access" to judicial proceedings. *See Nixon v. Warner Comm'ns., Inc.*, 435  
19 U.S. 589, 598–99 (1978); *Stoterau*, 524 F.3d at 1013 (discussing public interest in open judicial  
20 proceedings in criminal case). Nevertheless, the Supreme Court has approved the use of  
21 pseudonyms for litigants vindicating certain constitutional rights. *See, e.g., Roe v. Wade*, 410  
22 U.S. 113 (1973); *Doe v. Bolton*, 410 U.S. 179 (1973); *Poe v. Ullman*, 367 U.S. 497 (1961). Here,  
23 the Court does not at this time discern that anonymizing Plaintiffs' names will obstruct public

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24 <sup>3</sup> Again, the Court notes this finding is based solely on the record currently before it in this  
25 nascent stage of the litigation. Further, while the Court finds no prejudice to Defendants for  
26 purposes of the instant Motion for TRO, it declines to make a determination at this time as to  
27 whether Defendants will be prejudiced at later stages of the litigation if Plaintiff proceeds under a  
28 pseudonym. *See Advanced Textile*, 214 F.3d at 1068–69 (holding a court must "determine the  
precise prejudice at each stage of the proceedings" because the "balance ... may change as the  
litigation progresses.").

1 scrutiny of the important issues in this case. Moreover, the Court finds the public's interest in  
2 seeing cases decided on the merits tips this factor in Plaintiff's favor. *Advanced Textile*, 214 F.3d  
3 at 1073. Here, to the extent Plaintiff will dismiss his constitutional claims based on familial  
4 association if the Court denies his Pseudonym Motion because he fears vigilante justice will be  
5 taken out against his minor children (*see* ECF No. 2-1 at 3), the Court finds the public's interest  
6 in seeing the case decided on the merits is likely best served by granting Plaintiff's Pseudonym  
7 Motion.

8 For the foregoing reasons, the Court finds Plaintiff sufficiently raises serious questions on  
9 the merits of his Pseudonym Motion.

10 *ii. Irreparable Injury*

11 As previously discussed, Plaintiff has raised several concerns with respect to veiled threats  
12 of physical violence that were made against Minors A, B, and C during Plaintiff's criminal trial  
13 merely because of the children's relation to Plaintiff, a convicted sex offender. (*See* ECF No. 2 at  
14 5–6; ECF No. 2-1 at 2; ECF No. 2-2 at 3.) The Court has also determined Plaintiff's concerns  
15 that repercussions will similarly be taken out against his children should their identities as the  
16 minor Plaintiffs in the instant lawsuit become revealed are reasonable based on the record before  
17 the Court at this time. The Court therefore finds that the potential physical harm to Plaintiff or his  
18 minor children that could result if Plaintiff's identity was made known before the Court's ruling  
19 on the pending Pseudonym Motion constitutes irreparable harm. Accordingly, the Court finds  
20 Plaintiff has sufficiently shown a likelihood of irreparable harm in the absence of a TRO.

21 *iii. Balance of the Equities*

22 A court balancing the equities will look to possible harm that could befall either party.  
23 *See CytoSport, Inc. v. Vital Pharms., Inc.*, 617 F. Supp. 2d 1051, 1081 (E.D. Cal. 2009), *aff'd*,  
24 348 Fed. App'x. 288 (9th Cir. 2009). Where the Court finds serious questions going to the  
25 merits, the balance of equities must tip sharply in favor of Plaintiff. *Pimentel*, 670 F.3d at 1105  
26 (9th Cir. 2012); *All. for the Wild Rockies*, 632 F.3d at 1135.

27 Here, in light of the Court's determination that Plaintiff has sufficiently established  
28 serious questions regarding his likelihood of success on the merits of his Pseudonym Motion and

1 of likely irreparable harm, the Court finds the balance of equities tips in Plaintiff's favor. By  
 2 contrast, at this time, the Court has identified only minimal prejudice that may result to  
 3 Defendants if the Pseudonym Motion were granted. Any such prejudice is further diminished in  
 4 light of Plaintiff's very limited request in the instant Motion for TRO to merely proceed under a  
 5 pseudonym until the Court has ruled on Plaintiff's pending Pseudonym Motion. Indeed, should  
 6 Defendants prevail against Plaintiff in the pending Pseudonym Motion, which is set for hearing in  
 7 less than a month, they are not barred from filing unredacted, identifying documents for the  
 8 remainder of the litigation. For these reasons, the Court finds the balance of equities sufficiently  
 9 tips in favor of Plaintiff.

10 *iv. Public Interest*

11 Here, the Court finds the public interest factor weighs in Plaintiff's favor for the same  
 12 reasons previously discussed.

13 In sum, for the foregoing reasons, the Court finds Plaintiff has made a sufficient showing  
 14 on all four of the *Winter* prongs such that granting Plaintiff's Motion for TRO with respect to his  
 15 pseudonym request is appropriate at this time.

16 *v. Waiver of Bond Requirement*

17 Lastly, no bond shall be required. *See* Fed. R. Civ. Pro. 65(c) (requiring movant to post  
 18 security); *People of Cal. v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319, 1325–26 (9th Cir.  
 19 1985) (providing that “courts have discretion to excuse the bond requirement”). The Court  
 20 concludes there is no realistic likelihood of harm to Defendants from prohibiting them from  
 21 revealing Plaintiff's identity for less than two months at the outset of this litigation, pending the  
 22 Court's ruling on Plaintiff's Pseudonym Motion. *See Jorgensen v. Cassidy*, 320 F. 3d 906, 919  
 23 (9th Cir. 2003) (“The district court may dispense with the filing of a bond when it concludes there  
 24 is no realistic likelihood of harm to the defendant from enjoining his or her conduct.”).  
 25 Furthermore, the Court finds waiver of the bond requirement is appropriate here because Plaintiff  
 26 has raised serious questions with respect to the likelihood of success on the merits on his  
 27 Pseudonym Motion. *Ticketmaster L.L.C. v. RMG Techs., Inc.*, 507 F. Supp. 2d 1096, 1116 (C.D.  
 28 Cal. 2007) (“A bond may not be required, or may be minimal, when the harm to the enjoined

1 party is slight or where the movant has demonstrated a likelihood of success.”). Accordingly, the  
2 Court waives the bond requirement.

#### 3 IV. CONCLUSION

4 For the foregoing reasons, Plaintiff’s *Ex Parte* Motion for TRO with respect to Plaintiff’s  
5 request to enjoin BCPD and Lara’s enforcement of his special PRCS conditions is DENIED  
6 without prejudice. (ECF No. 10 at 8–21, 22–24.)

7 Plaintiff’s *Ex Parte* Motion for TRO is GRANTED with respect to Plaintiff’s request to  
8 temporarily enjoin Defendants from revealing Plaintiff’s identity, and to permit Plaintiff and  
9 Minors A, B, and C to proceed under pseudonym. (ECF No. 10 at 21–22.) Pursuant to this  
10 Order, Plaintiff and his children are permitted to proceed in this matter under the pseudonyms of  
11 “John Doe,” and “Minors A, B, and C.” Defendants are temporarily enjoined from disclosing, via  
12 an unredacted or unsealed public court filing or any other method of disclosure, Plaintiff’s true  
13 identity or any identifying characteristic of him or his criminal prosecution.

14 Defendants are ordered to show cause in writing no later than December 21, 2020, as to  
15 why an Order for Preliminary Injunction should not be granted pending briefing and disposition  
16 of Plaintiff’s pending Pseudonym Motion (ECF No. 2). Such briefing shall be filed and served by  
17 the aforementioned date. Plaintiff may file and serve a reply not later than December 28, 2020.  
18 In order to permit the recently-served Defendant Lara an opportunity to review and respond to  
19 Plaintiff’s Motion, the Court finds good cause to exercise its discretion to extend the expiration  
20 deadline of the TRO. Fed. R. Civ. P. 65(b)(2). Accordingly, the TRO shall remain in effect for  
21 28 days, or until an order on Plaintiff’s request for preliminary injunction issues, whichever is  
22 sooner.

23 Pursuant to Local Rule 231(c)(8) and Federal Rule of Civil Procedure 65(b), any party  
24 affected by this Order shall have the right to apply to the Court for modification or dissolution of  
25 this Order on two (2) days’ notice or such shorter notice as the Court may allow. No bond shall  
26 be required.

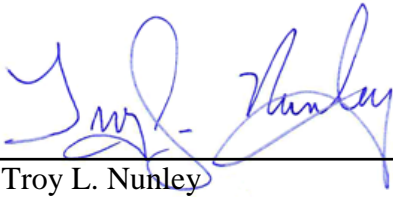
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1 IT IS SO ORDERED.

2 DATED: December 9, 2020

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Troy L. Nunley  
United States District Judge